



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 6, 2005

Ms. Valerie Coleman-Ferguson
Assistant General Counsel
University of Houston System
311 East Cullen Building
Houston, Texas 77204-2028

OR2005-03942

Dear Ms. Coleman-Ferguson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 223605.

The University of Houston System (the "system") received a request for information pertaining to "judges/justices who have worked at or for the University of Houston Law Center as faculty, or in any other capacity, at any time since January 1, 2000 while contemporaneously serving in a judicial capacity[,]" including identities, salaries, and dates of employment. Further, the requestor seeks the personnel files or "PeopleSoft or other electronic records" pertaining to the judges described above. Finally, the requestor seeks a listing of all law suits filed by the system against current or former students that were assigned to a specified court, to include the "outcome" of the cases. You state that no documents exist that are responsive to the request for the listing of all law suits filed by the system against current or former students.¹ You claim that the remaining requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You inform us that some of the requested information is subject to a previous ruling from this office. In Open Records Letter No. 2005-01643 (2005), this office determined the

¹ The Act does not require a governmental body to release information that did not exist when a request for information was received or to prepare new information in response to a request. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266, 267-68 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

following: the information subject to section 552.022 must be released; Forms I-9 and W-4 are confidential under federal law, and must be withheld under section 552.101 of the Government Code; for those employees who timely elected to keep their personal information confidential, the system must withhold the types of information that we marked under section 552.117(a)(1); even if section 552.117 does not apply, social security numbers may be confidential under federal law; and the information we marked under sections 552.130 and 552.136 must be withheld. The facts and circumstances surrounding that ruling do not appear to have changed concerning these categories of information. Therefore, to the extent that the requested records consist of this information that was at issue in Open Records Letter No. 2005-01643, the system must continue to rely on our prior ruling. See Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling).

However, we note that relevant facts and circumstances have changed since the issuance of Open Records Letter No. 2005-01643 for the information that we determined the system could withhold under section 552.103 of the Government Code. At the time of that ruling, employees of the system, in their official capacities, were defendants in a pending lawsuit filed by the requestor, styled *Faculty Rights Coalition v. George C. Hanks*, No. H-04-4494, which was filed on November 26, 2004 in the United States District Court for the Southern District of Texas, Houston Division. We determined, therefore, that the system was involved in pending litigation on the date it received the request for information that was the subject of Open Records Letter No. 2005-01643. However, you advise that the court dismissed the lawsuit against the employees with prejudice on February 9, 2005. As such, litigation is no longer pending. Therefore, the system may no longer rely on Open Records Letter No. 2005-01643 for the information that we determined the system could withhold under section 552.103.

Accordingly, we must address the system's responsibilities under the Act for the information for which it claims the applicability of section 552.103. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The system failed to submit a copy of the information

requested or representative samples as required by section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to timely submit to this office the information required in section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). A compelling reason exists when third-party interests are at stake, or when information is confidential under other law. Open Records Decision No. 150 (1977).

Although you claim that the information at issue is excepted from disclosure under section 552.103 of the Government Code, we note that this provision is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Gov't Code § 552.007; Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision Nos. 665 at 2 n.5 (2000) (discretionary exceptions generally). Your claim under section 552.103 is not a compelling reason for non-disclosure under section 552.302, and none of the responsive information may be withheld under this exception. Therefore, the information for which you claim section 552.103 applies must be released to the requestor.

In summary, the system must continue to rely on Open Records Letter No. 2005-01643 for the information outlined above. All remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cary Grace
Assistant Attorney General
Open Records Division

ECG/jev

Ref: ID# 223605

c: Mr. Wolfgang P.H. Mino
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